

# Legal Assistance of Western New York, Inc. ®



We provide free legal aid to people with civil legal problems in western New York.

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## Applying for New York State Unemployment Insurance Benefits

**Please note:** If you have questions about applying for unemployment insurance benefits, we encourage you to call the New York State Department of Labor at 1-888-209-8124. You can also visit the Department of Labor website at <https://labor.ny.gov/unemploymentassistance.shtm>

### **What are Unemployment Insurance Benefits?**

Unemployment insurance benefits provide temporary income for eligible workers who become unemployed. The benefits are administered by the New York State Department of Labor office. A portion of the benefits are paid for by employers. No deductions are taken from a worker's paycheck for this program.

### **Who is Eligible for Unemployment Benefits?**

To be eligible for unemployment benefits, a claimant must have earned enough wages in covered employment during a set time period, and have worked in New York State within the last eighteen months. The Department of Labor, not the former employer, makes the initial determination of whether a claimant will receive benefits.

In order to receive benefits, claimants should be:

1. Ready to start working right away, and
2. Physically and mentally able to work.

New York State has “at-will” employment. This means that a worker can usually be fired at any time for non-discriminatory reasons, unless they are working under a contract or are a covered union member. To receive unemployment benefits though, it cannot be the claimant’s fault that they are unemployed.

## **How do I Apply?**

A claimant can apply for benefits online or by telephone. Claimants should file their claim during their first week of total or partial unemployment, or they may miss some benefits they could have received.

**To apply online**, claimants can go to the Department of Labor website:  
[https://labor.ny.gov/ui/how\\_to\\_file\\_claim.shtm](https://labor.ny.gov/ui/how_to_file_claim.shtm)

**To apply by telephone**, claimants can call the Department of Labor phone line: **1-888-209-8124**

## **What Should I know Before I Apply?**

When a claimant applies for unemployment insurance benefits, they must verify that they are able to work. Claimants must choose a reason why they no longer work for their most recent employer. It is very important to be correct when choosing a reason during the application process!

A claimant may offer the following reasons:

1. Lack of work
2. Voluntary quit
3. Discharged/let go unable to meet performance standards
4. Fired for misconduct
5. Strike/lockout issues

The reason a claimant chooses can determine whether they get benefits or not. It could also result in a hearing about the issue if there is a disagreement about the reason a claimant is no longer working. When a claimant applies for unemployment benefits, their former employer can provide their view of what happened.

In order to receive unemployment benefits, it cannot be the claimant's fault that they are unemployed. The former employer is also able to provide their view of what happened. A claimant will have difficulty receiving benefits if they quit without a good reason, were fired for cause, or for other similar reasons.

The Department of Labor may determine that, based upon how the job ended, the claimant should not receive benefits. The claimant may receive a determination notice, and their unemployment insurance benefits may be denied, or their benefits may stop. If the claimant

disagrees with the determination, they can request a hearing in writing within 30 days from the date of the notice, using the directions on the notice.

If the Department of Labor determines that the claimant made a false statement when they applied for benefits, the claimant may also be charged with an overpayment. If the claimant receives a notice about an overpayment, they can request a hearing for that notice.

Claimants may claim benefits weekly for as long as they are unemployed. Each week, claimants certify that they remain out of work, that they are seeking work, and that they are able to work.

***Even if they have been denied benefits, claimants should certify weekly.*** If a claimant later gets a favorable hearing decision, they may be entitled to the unpaid benefits.

### **Can I Receive Unemployment and Start a Business?**

Claimants should talk to the New York State Department of Labor claims center before starting your own business while claiming unemployment insurance benefits.

### **Can I Receive Unemployment and go to School?**

Claimants should talk to the New York State Department of Labor claims center before attending school while claiming unemployment insurance benefits.

### **What if I Apply and my Request is Denied?**

***Claimants should request a hearing in writing within 30 days from the date of the Department of Labor notice, using the directions on the notice.*** You can request a hearing online at the Department of Labor website. You can also write a letter to the New York State Department of Labor:

New York State Department of Labor

P.O. Box 15131

Albany, New York

12212-5131

You should include your Social Security number on your hearing request, as well as the reasons that you disagree with the determination. Keep this letter brief, as it will likely be part of the

hearing evidence packet.

Because the Department of Labor made the initial decision, it is considered a party to every hearing. Therefore, the hearings are conducted by the Appeal Board.

Reasons to request a hearing:

1. The claimant was denied benefits and believes that they are entitled to receive unemployment insurance benefits,
2. The claimant is receiving benefits and wants to argue that they should not have stopped, and/or
3. The claimant has received an overpayment notice.

Hearings can take weeks or even months to schedule. Because of this, claimants may want to look for other income sources during this time.

**When a hearing is scheduled, claimant will receive a notice that says:**

1. The date/time of the hearing,
2. The administrative law judge,
3. Whether the hearing will be held in person or by telephone,
4. Any witnesses or information that the parties should provide, and
5. The issues that will be discussed at the hearing.

The claimant may receive the hearing notice only a few days before their scheduled hearing. If a claimant needs more time to prepare for the hearing, they can contact the Appeal Board office. Often, if a claimant requested the hearing and cannot proceed with the hearing, the claimant defaults and must then request in writing that the hearing be reopened. The request must be made within a reasonable time. At the next hearing, the claimant will need a good reason for not proceeding at the prior hearing. A claimant can only ask for a reopening one time. Any further reopening requests will be referred to the Appeal Board.

If the claimant will have a telephone hearing, they will receive the hearing evidence packet by mail. If the hearing will be conducted in person, the file for the hearing will be available at the Appeal Board office. Claimants can go to the hearing office prior to the hearing to review the file. If a claimant has additional evidence, they should submit it as soon as possible to the administrative law judge and the other parties.

The hearing will be an administrative hearing with relaxed rules of evidence and hearsay. The administrative law judge usually asks questions of all parties. The judges can help unrepresented parties to structure their questions and arguments. At a telephone hearing, it is important to speak loudly and clearly because hearings are tape-recorded.

The administrative law judge will not give the parties a decision at the hearing. The parties will receive the decision in the mail within about a week. If a claimant disagrees with the decision,

they can appeal the decision. Please see the Appealing a Unemployment Insurance Benefits Denial section for more information.

### **What if I get another job and don't report it?**

Important: If a person claims unemployment insurance benefits while they are earning money and they are not reporting those wages, they can face criminal penalties. A person can also face criminal penalties if they are not using their time to find a new job. This can be considered fraudulently collecting benefits.

For more information, please review the claimant handbook, which is found on the New York State Department of Labor website: <https://labor.ny.gov/formsdocs/ui/TC318.3e.pdf>.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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